

Thursday, 29 August 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On an application on behalf of the
Prosecution under Rule 6b (1) pertaining to
certain documents of the International Prosecu-
tion Section.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

John J. Smith
Official Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

MR. FRANK S. TAVENNER, JR.
MR. WORTH E. MCKINNEY
MR. G. OSMOND HYDE
MR. SOLIS HORWITZ

For the Defense Section:

MR. WILLIAM LOGAN, JR., Counsel for the
Accused KIDO, Koichi
MR. MICHAEL LEVIN, Counsel for the
Accused SUZUKI, Teiichi
MR. DAVID F. SMITH, Counsel for the
Accused HIROTA, Koki
MR. R. USAMI, Counsel for the
Accused HIRANUMA, Kiichiro
MR. T. OKAMOTO, Counsel for the
Accused MINAMI, Jiro

For the Office of the General Secretary, IMTFE

EDWARD H. DELL, Judge
Legal Adviser to the Secretariat,
MR. G. WALTER BOWMAN
Clerk of the Court
MR. C. A. MANTZ,
Deputy Clerk of the Court

The proceeding was begun at 0910.

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THE PRESIDENT: This is Paper 379 - an application by the prosecution pertaining to certain documents. They ask for permission to introduce and serve on the Accused copies of certain documents and copies of excerpts only of certain documents in Japanese and English.

The first of the items appears in Schedule A. Is there agreement upon any?

MR. LOGAN: With respect to Item 1, Document No. 949, - that purports to be a report by ARITA which deals with the proceedings of the Privy Council relative to the Anti-Comintern Agreement, and the prosecution desires to process six pages. We would like to have, in addition to the six pages that part of his speech beginning on the fourth line of page 32 and ending on the seventh line of page 40, and also that portion beginning on the second line on page 48 and ending on the last line of page 51, which makes a total of approximately eleven additional pages. Those are Japanese documents.

MR. SMITH: I represent HIROTA, who is interested in the Anti-Comintern Pact, and we would like to have the entire proceedings of the Privy

Council translated. That is all necessary as far as the defense is concerned. It has to do with the Anti-Comintern Agreement and is in the form of a Tri-Partite Pact. There is really no occasion to have only a part of it. It is highly important as far as the Anti-Comintern Pact is concerned, and we would request that the entire proceedings be shown.

THE PRESIDENT: You want the whole 142 pages?

MR. SMITH: Yes, sir. I think the prosecution should translate it, and not put the burden on the defense.

THE PRESIDENT: Mr. Logan is concerned only with the parts which were contributed by ARITA.

MR. LOGAN: That is right. I did not know that Mr. Smith intended to oppose this application.

MR. TAVENNER: Pages 32 to 90 deal with the proceedings of the Privy Council. I do not recall what the rest of the 142 pages are, without looking at the document. It is in Japanese, and there is no way for me to tell until I look at it. The chances are that it relates to agreements that are not part of the actual minutes of the proceedings. In fact, there is no sense to have the document entirely, and I ask the right to introduce excerpts.

MR. SMITH: Your motion says it relates to the Anti-Comintern Pact.

MR. TAVENNER: Yes, pages 32 to 90. The book is 142 pages, and we were asking for the statement made by ARITA.

THE PRESIDENT: But you are tendering it against HIROTA?

MR. TAVENNER: Yes, sir, against all the defendants.

THE PRESIDENT: You are entitled to be heard. You really want the whole of the document, Mr. Smith. I am afraid I will have to look at it before coming to a conclusion. Can you give any reason why it should not be included, Mr. Tavenner?

MR. TAVENNER: Yes, the fact is that it is not material to the matters the prosecution desires to introduce in evidence. I dislike very much to have the burden of processing the evidence that the defense desires to rely upon, particularly.

THE PRESIDENT: You have the burden of proof, and you have the whole document. You have the burden of getting excerpts.

MR. TAVENNER: If your Honor desires it, I will review this document, and will look at the entire 58 pages, so as to advise you more accurately

what the document contains.

MR. LEVIN: Mr. President: It does seem to me that where a document is being offered by the prosecution that the defense will desire all of it, even though the burden of translating might be on us. It seems to me that this phase of it is a mechanical phase, especially if he desires it,- then the whole document should be translated at one time. It is not as though we are two adverse parties, where one person expects the expense should be attributable to the other party involved. In that respect, this case is a sort of a joint function, and it would be a saving of time and effort to have the whole thing.

THE PRESIDENT: We must have a just trial and see that the Japanese get a just trial, and we must produce the material on which the case will be based. It is most difficult to get interpreters and translators, Mr. Levin.

MR. SMITH: Permit me to make an observation. The prosecution makes excerpts and takes a bare skeleton. He has made the investigation, and puts the burden on us to translate the entire document in order that the Court gets the book. It is not processed, and we have the burden of translating it.

MR. HORWITZ: I think there is a different point in connection with the application. It

is the question of the mechanical work in connection with the translation. The application goes to the matter of how much of the Japanese should be processed. Under Rule 6 b (1), the document being in Japanese, it would be sufficient to merely translate the portion of the document we wish. That is Rule 6 b (1). The question is how much Japanese shall be processed, how much translation will be necessary for the prosecution.

THE PRESIDENT: This is Japanese into English and English into Japanese?

MR. HORWITZ: Yes, sir.

THE PRESIDENT: I do not think it matters much. They have Japanese and American defense counsel. I am inclined to leave it at eight pages and the six pages. The Japanese counsel can translate what is not included in the excerpt, and see how far they require additional material. You have not translated it, Mr. Smith, and you do not know what additional material you might need?

MR. SMITH: No, sir.

THE PRESIDENT: You are making an argument that it will be relevant to your defense?

MR. SMITH: Yes, sir. With the knowledge I now possess, I think everything in it will be relevant.

THE PRESIDENT: Mr. Logan has had the advantage of perusing it, and knows what material he needs. The prosecution wants those six or eight pages, and I do not think I shall go into the matter and form a judgment. I will grant it myself.

MR. LEVIN: I suggest that, in view of your Honor's statement, possibly a perusal by the Japanese counsel of the balance of this document, and after the entry of the formal order, if it appears that any portion of that is desirable, we must request that we have it translated and processed, and that we must make an application and request that information.

MR. TAVENNER: I got my information from Mr. USAMI from the Japanese document.

THE PRESIDENT: You cannot say that Mr. Logan is seeking something that he is not entitled to.

MR. TAVENNER: No, sir.

THE PRESIDENT: Make an order to include the necessary pages? I can do nothing for you, Mr. Smith, until you have had the Japanese text read and tell me just how much more you want. It may be that you will not want anything more.

MR. SMITH: That is impossible, your Honor. I am in court all day, and have practically no help. I do not read Japanese. My Japanese counsel does not speak English. There are many things to be done, and the difficulty is enormous.

THE PRESIDENT: Something should be done to remedy it. You should have the same assistance as any other American counsel.

MR. LEVIN: The court proceedings take a lot of time.

THE PRESIDENT: I shall always be prepared to hear any application. After the document has been perused and he has made up his mind. I could never make an order in his favor now. I might order material that may never be used because it is not relevant.

What about No. 2?

MR. TAVENNER: There is no objection on No. 2. Mr. Smith has not perused any of the document.

MR. SMITH: I make the same request. I am very much concerned with No. 2, and I make the same request.

THE PRESIDENT: Make an order as prayed with respect to Item 2.

How about Item 3?

MR. LOGAN: I believe there is no objection.

THE PRESIDENT: Make an order, as prayed.

MR. LOGAN: Item 4. I would like to have the complete statement, which is very short. It is only one page. The prosecution has taken one paragraph.

THE PRESIDENT: Order, as prayed, with the addition Mr. Logan requested.

MR. TAVENNER: There is no objection on Item 5.

THE PRESIDENT: Order on Item 5 granted as prayed.

(Whereupon, at 0925, the proceeding was concluded.)
